

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

SHERI A. FENNESSEY,

Plaintiff,

vs.

LACLEDE GAS COMPANY,

Defendant.

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Case No. 4:11-CV-1272 (CEJ)

**MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff's motion to disqualify Judith L. Garner as counsel for defendant Laclede Gas Company, pursuant to Missouri Supreme Court Rule 4-3.7(a). Plaintiff asserts that Ms. Garner must be disqualified because she exchanged correspondence with the Missouri Division of Employment Security concerning plaintiff's claim for unemployment benefits. Plaintiff asserts that by virtue of this correspondence Ms. Garner has become a necessary witness in this action.

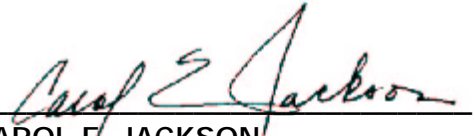
Motions to disqualify counsel are subject to particularly strict judicial scrutiny given the potential for abuse by opposing counsel. Droste v. Julien, 477 F.3d 1030, 1035 (8th Cir. 2007). "[T]he extreme measure of disqualifying a party's counsel of choice should be imposed only when absolutely necessary." Macheca Transp. Co. v. Philadelphia Indem. Ins. Co., 463 F.3d 827, 833 (8th Cir. 2006) (internal quotation marks and citation omitted). To disqualify an attorney as a "necessary witness" under Rule 4-3.7, there must be a showing that "'there are things to which [the attorney] will be the only one available to testify.'" Id. (quoting State ex rel. Wallace v. Munton, 989 S.W.2d 641, 646 (Mo. Ct. App. 1999)). The burden is on plaintiff, as the moving party, to establish that Ms. Garner is the only person who could testify to such matters. See

Raster v. Ameristar Casinos, Inc., 280 S.W.3d 120, 133-34 (Mo. Ct. App. 2009).

Plaintiff has made no attempt to meet this burden. And, given the circumstances of this case, it seems unlikely that Ms. Garner is the only person who can testify about matters relevant to the case.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion to disqualify defendant's counsel [Doc. #7] is denied.

  
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CAROL E. JACKSON  
UNITED STATES DISTRICT JUDGE

Dated this 19th day of October, 2011.